

# EL PASO COUNTY



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Redtail Ranch Subdivision  
Preliminary Plan – SP-18-4  
Final Plat – SF-18-21

Reviewed by: M. Cole Emmons, Senior Assistant County Attorney *M.C.E.*  
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## FINDINGS AND CONCLUSIONS:

1. This is a proposal by Michael S. Ludwig (Applicant) for approval of a preliminary plan and final plat to subdivide approximately 67.9 acres of land into 12 single-family residential lots. All lots are proposed to be a minimum of 5 acres in size. The property is currently zoned RR-5 (Rural Residential).
2. The Applicant has provided for the source of water to derive from individual on-lot wells withdrawing from either the Dawson or Denver Aquifers pursuant to the groundwater decree and amended plan for augmentation in District Court Water Division Consolidated Case Nos. 18CW3003 (Div. 2) and 18CW302 (Div. 1) (the "Decree"). Pursuant to the Water Supply Information Summary, the Applicant estimates its annual water requirements for the 12-lot subdivision at 1.06 acre-feet per lot, which equates to 0.26 acre-feet/year/lot for in-house use and 0.8 acre-feet/year/lot for irrigation, stock watering, or other uses, for a total of 3.12 acre-feet/year for the 12 lots for in-house use and a total of 9.6 acre-feet/year for the 12 lots for irrigation, stock watering, or other uses, for a grant total demand of 12.72 acre-feet/year for the subdivision. Applicant will need to provide a supply of 3,816 acre-feet of water (12.72 acre-feet/year x 300 years) to meet the County's 300-year water supply requirement.
3. In a letter dated September 5, 2018, the State Engineer's Office reviewed the proposed water supply for this subdivision. The State Engineer's Office indicates that the proposed source of water for the subdivision is the Denver Basin with the water supply

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withdrawing from either the Dawson or Denver Aquifers operating pursuant to the plan for augmentation noted in the Decree. The State Engineer notes that there are pre-existing wells on the property (well permit nos. 68030-F, 74767-F, 74768-F, 1122, and 146809) which will continue to be used in the subdivision pursuant to the decreed plan for augmentation. Well permit nos. 68030-F, 74767-F, and 74768-F were obtained pursuant to C.R.S. § 37-90-137(4) and court decreed plans for augmentation to construct wells for domestic uses. Well permit nos. 1122 and 146809 were obtained pursuant to C.R.S. § 37-92-602 for domestic uses. The State Engineer will require Applicant to obtain new well permits pursuant to C.R.S. § 37-90-137(4) in order to utilize the pre-existing wells.

The following chart delineates the available water supply pursuant to the Decree:

<b>Aquifer</b>	<b>Annual amount available under 67.94 acres</b>		
	<b>100 year allocation</b>	<b>300 year allocation</b>	<b>Total Volume</b>
Dawson (NNT)	55.4	18.5	5,536 acre-feet
Denver (NNT)	42.1	14.0	4,212 acre-feet
Arapahoe (NT)	29.5	9.8	2,953 acre-feet
Laramie-Fox Hills (NT)	19.5	6.5	1,947 acre-feet

The State Engineer noted that the plan for augmentation “allows for diversion of 12.72 acre-foot annually from the Dawson or Denver aquifers for a maximum of 300 years.” Further, the State Engineer noted that the “annual estimated demand, for the entire subdivision, is 12.72 acre-feet as allowed by the augmentation plan.”

Finally, pursuant to C.R.S. § 30-28-136(1)(h)(I), the State Engineer’s Office stated that “the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(2) and the plan for augmentation noted herein, for all wells in the subdivision and operates the wells in accordance with the terms and conditions of any future well permits.”

4. The water quality requirements of Section 8.4.7.B.10 of the El Paso County Land Development Code must be satisfied.

5. Plan for Augmentation. The Decree quantifies previously unquantified groundwater underlying approximately 28.03 acres denoted as the “East Parcel” of property owned by Applicant, which water will be used in conjunction with groundwater previously quantified in Case No. 07CW49 underlying 39.91 acres denoted as the “West Parcel” of the balance of property owned by Applicant. The East Parcel and West Parcel total approximately 67.94 acres and are collectively referred to herein as “the Property.”

The Decree adjudicates the water rights under the Property for Redtail Ranch Well Nos. 1 through 12, to be constructed into either the not-nontributary Dawson or Denver Aquifers, but no well shall be constructed to more than one aquifer at any time. The Decree permits the Applicant to subdivide the parcel into a total of 12 lots and augmenting Redtail Ranch Wells as existing wells or as wells to be constructed to either the Dawson or Denver Aquifers along with any additional or replacement wells. The wells may pump up to 1.06 acre-feet of water per year, for a maximum total of 12.72 acre-feet to be withdrawn from either the Dawson Aquifer or the Denver Aquifer. Each of the 12 lots may utilize up to 0.26 acre-feet of water for domestic in-house use, with an additional 0.8 acre-feet per year per lot for irrigation, watering of horses or livestock, or use in water features or hot tubs or other beneficial uses, including recreation, wildlife, wetlands, fire protection, piscatorial, storage, and augmentation. In short, the Decree permits the Applicant to withdraw and use a total of 3,816 acre-feet of water from the Dawson or Denver Aquifers for this 12-lot subdivision.

Replacement of depletions during pumping. The plan for augmentation will have a pumping period of a minimum of 300 years. For any wells constructed into the not-nontributary Dawson Aquifer, the Applicant is required to replace actual stream depletions on an annual basis during the 300 years of pumping by return flows from non-evaporative septic systems. For any wells constructed into the not-nontributary Denver Aquifer, Applicant is required to replace 4% of pumping. The Decree indicates that for calculating the replacement of depletions during pumping, there is an assumption that all of the 12 Redtail Ranch Wells are constructed into the Dawson Aquifer. [Therefore, it does not appear that an additional provision of Denver Aquifer groundwater would have to be allocated and conveyed to lot owners to cover this 4% replacement requirement.] The Decree indicates the annual consumptive use for non-evaporative septic systems is 10% per year per residence; therefore, at an annual household use rate of 0.26 acre-feet per lot totaling 3.12 acre-feet for all 12 lots, 2.81 acre-feet is to be replaced to the stream system per year using non-evaporative septic systems, and the maximum depletions are 2.79 acre-feet annually; thus, the Decree concludes that stream depletions will be adequately augmented. Therefore, Applicants, their successors and assigns, must use nonevaporative septic tanks and leach fields for each single-family dwelling.

Replacement of post-pumping depletions. The Decree requires the Applicant to replace any injurious post-pumping depletions by reserving up to 1,908 acre-feet of water from the nontributary Arapahoe Aquifer and 1,908 acre-feet of water from the nontributary Laramie-Fox Hills Aquifer, or greater amounts as necessary, and constructing wells into these Aquifers to replace post-pumping depletions. The reserved nontributary Arapahoe and Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions, and the Decree requires that these waters may not be severed from ownership of the overlying property.

6. Analysis. The Court decreed a permitted withdrawal of 12.72 acre-feet of water annually for 300 years for a total of 3,816 acre-feet from the Dawson or Denver

Aquifers, which can be withdrawn to serve the 12 residential lots in this subdivision through individual wells, including existing wells. With a total available supply based on the Decree of 5,536 acre-feet of Dawson Aquifer water and 4,212 acre-feet of Denver Aquifer water, there should be a sufficient supply from either the Dawson or Denver Aquifers to cover the proposed demand even if all 12 wells are drilled into either Aquifer. With the determination in the Decree that depletions will be adequately replaced during pumping from return flows and post-pumping from the Arapahoe and Laramie-Fox Hills Aquifers, there should be a sufficient supply to meet the County's 300 year water supply rule.

7. Therefore, at this time, based on the finding of no injury and sufficiency by the State Engineer, the decreed water rights and plan for augmentation in District Court Water Division Consolidated Case Nos. 18CW3003 (Div. 2) and 18CW302 (Div. 1) (the "Decree"), the applicable water rights decreed in Case No. 07CW49, and based on the requirements listed below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. The El Paso County Health Department shall make a finding as to water quality.

#### REQUIREMENTS:

Plat Notes and Documentation are required to address the following:

A. Applicant shall take all necessary steps to ensure that if and when Applicant conveys the property for this subdivision, that the appropriate water rights and obligations of the Decree are also conveyed to the appropriate successor purchaser(s). These Requirements shall apply to the Applicant and its successors and assigns. Applicant, its successors and assigns, shall create a Homeowners' Association ("HOA") and advise the HOA and all future owners of these lots of all applicable requirements of the Decree entered in District Court Water Division Consolidated Case Nos. 18CW3003 (Div. 2) and 18CW302 (Div. 1), as well as their obligations to comply with the Decree and plan for augmentation, including but not limited to, costs of operating the plan for augmentation, including the costs for constructing and pumping the Arapahoe and/or Laramie-Fox Hills Aquifer wells for replacing post-pumping depletions, and the responsibility for metering and collecting data regarding water withdrawals from all wells.

B. Applicant shall reserve and convey by warranty deed to the HOA, Applicant's interests, rights, and obligations to a total amount of 1,908 acre-feet of Arapahoe Aquifer groundwater and to a total amount of 1,908 acre-feet of Laramie-Fox Hills Aquifer groundwater to be used for replacing post-pumping depletions. Applicant shall create restrictive covenants upon and running with the property which shall obligate individual lot owners and the HOA to carry out the requirements of the plan for augmentation. The conveyance instruments and/or deed(s) shall provide that these water rights shall be appurtenant to the land, to be used for replacing depletions to the applicable stream systems, shall not be separated from the transfer of title to the land,

and shall not be separately conveyed, bartered, or encumbered. Such conveyance instruments and/or deed(s) shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat.

C. Applicant shall require non-evaporative septic systems and leach fields to replace depletions during 300 years of pumping from either the Dawson Aquifer or the Denver Aquifer. Deeds for the subdivision property as a whole and for individual lots shall specifically state that all return flows shall be dedicated by Grantee to replacing depletions during pumping of the Dawson Aquifer or the Denver Aquifer pursuant to the plan for augmentation, and said return flows shall not be sold, leased or otherwise used for any other purpose, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered. In addition, the Covenants shall recite that return flows from non-evaporative septic systems shall comply with the requirements of the plan for augmentation, that such return flows shall only be used to replace depletions, shall not be sold, leased or otherwise used for any other purpose, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered. To the extent that wells use Denver Aquifer water, adequate replacement of the 4% of pumping shall be made from the return flows.

D. Applicant, its successors and assigns, at the time of lot sales, shall convey by warranty deed to individual lot owners sufficient water rights in the underlying Dawson or Denver Aquifers to satisfy El Paso County's 300 year water supply requirement: 318 acre-feet total (1.06 acre-feet x 300 yrs.) for each of the 12 lots. Applicant may chose, but the County is not requiring, to convey a 300-year water supply in both the Dawson and Denver Aquifers to give the lot owners the option to use either Aquifer. To the extent necessary, Applicant's deeds shall convey appropriate water rights in Case No. 07CW49 referenced in the Decree. Said deeds shall provide that the water rights shall be appurtenant to the land, to be used for the benefit of the lot owner, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered. It is anticipated that these conveyances will satisfy the State Engineer's evidentiary requirement that an applicant for an individual on-lot well has acquired the right to the portion of water being requested on the application. Applicant shall provide a form deed for such conveyance that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording of the final plat.

E. Applicant shall submit a Declaration of Covenants, Conditions, and Restrictions as well as Bylaws and Articles of Incorporation of the HOA to the Planning and Community Development Department and the County Attorney's Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording of the final plat. Said Declaration shall cross-reference the decreed plan for augmentation and the related water rights decrees, and shall recite the obligations of the individual lot owners and the

HOA under each of these documents. Applicant shall provide a copy of the Certificate of Incorporation of the HOA by the Secretary of State to the Planning and Community Development Department and the County Attorney's Office prior to recording of the final plat.

F. Applicant, its successors and assigns, shall record all applicable documents including, but not limited to, the Decree and plan for augmentation, agreements, assignments, and warranty deeds regarding the water rights, Declaration of Covenants, Bylaws, and Articles of Incorporation in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

G. The following plat note shall be added that addresses the State Engineer's admonition to advise landowners of potential limited water supplies in the Denver Basin:

"Water in the Denver Basin aquifers is allocated based on a 100 year aquifer life; however, for El Paso County planning purposes, water in the Denver Basin aquifers is evaluated based on a 300 year aquifer life, which is based on an allocation approach. Applicants, the Home Owners Association, and all future owners in the subdivision should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than either the 100 years or 300 years indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers, and Applicants and their successors and assigns, including individual lot owners in the subdivision and the HOA, may be required to acquire, develop, and incorporate alternative renewable water resources in a permanent water supply plan that provides future generations with a water supply."

cc: Kari Parson, Project Manager, Planner II